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**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing)
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Filing Date: January 10, 2023) Case No.: PSH-23-0046
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Issued: May 18, 2023

Administrative Judge Decision

Phillip Harmonick, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (the Individual) to hold an access authorization under the United States Department of Energy's (DOE) regulations, set forth at 10 C.F.R. Part 710, "Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material."¹ As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual's access authorization should be restored.

I. BACKGROUND

The Individual was hired by a DOE contractor in January 2022. Exhibit (Ex.) 10 at 24.² On August 15, 2022, the local security office (LSO) received a report indicating that the Individual was involuntarily hospitalized following an "anxiety [and] paranoia attack" and had subsequently entered treatment voluntarily. Ex. 6.

The LSO issued the Individual a letter of interrogatory (LOI) concerning the information received in the report. Ex. 7. In her response, the Individual indicated that she had experienced a manic episode and that clinicians had diagnosed her with Bipolar Disorder during her involuntary hospitalization. *Id.* at 1.

¹ The regulations define access authorization as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). This Decision will refer to such authorization as access authorization or security clearance.

² The internal pagination of numerous exhibits offered by the local security office does not correspond to the number of pages included in the exhibits. For example, portions of Ex. 10 include multiple page numbers due to having been compiled from multiple sources with differing pagination. This Decision cites to pages in the order in which they appear in exhibits without regard for their internal pagination.

On October 13, 2022, the Individual met with a DOE-contracted psychologist (DOE Psychologist) for a psychological evaluation. Ex. 8 at 2. On October 26, 2022, the DOE Psychologist issued a report of the evaluation (Report) in which she opined that the Individual met sufficient diagnostic criteria for a diagnosis of Bipolar I Disorder, Most Recent Episode Manic, under the *Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition (DSM-5)*, and that this condition could impair the Individual’s judgment, stability, reliability, or trustworthiness. *Id.* at 8.

The LSO issued the Individual a letter notifying her that it possessed reliable information that created substantial doubt regarding her eligibility for access authorization. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guideline I (Psychological Conditions) of the Adjudicative Guidelines. Ex. 1.

The Individual exercised her right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative hearing. The LSO submitted ten exhibits (Exs. 1–10). The Individual submitted fourteen exhibits (Exs. A–N). The Individual testified on her own behalf. Hearing Transcript (Tr.) at 3, 9. The LSO offered the testimony of the DOE Psychologist. *Id.* at 3, 48–49.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guideline I (Psychological Conditions) as the basis for its determination to suspend the Individual’s access authorization. Ex. 1. “Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline.” Adjudicative Guidelines at ¶ 27. The SSC cited the DOE Psychologist’s opinion that the Individual met sufficient diagnostic criteria for a diagnosis of Bipolar I Disorder, Most Recent Episode Manic, under the *DSM-5* and that this condition could impair her judgment, stability, reliability, or trustworthiness. Ex. 1. The LSO’s citation of the DOE Psychologist’s opinion that the Individual has a psychological condition that could impair her judgment, stability, reliability, or trustworthiness justifies the LSO’s invocation of Guideline I. Adjudicative Guidelines at ¶ 28(b).

III. REGULATORY STANDARDS

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Dep’t of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance).

An individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). An individual is afforded a full opportunity to present evidence supporting his or her eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. *Id.* at § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

IV. FINDINGS OF FACT

The Individual began working for a DOE contractor in January 2022. Ex. 10 at 24. She was granted access authorization in March 2022. Tr. at 10. The Individual met with a psychologist employed at the DOE site at which she works (Site Psychologist) on July 22, 2022, and August 3, 2022, because “[s]he had the sense that something was not right but could not articulate it clearly.” Ex. 8 at 6. On or about August 3, 2022, the Individual began to experience difficulty sleeping and had a verbal fight with a coworker, who is also a personal friend of the Individual, regarding an interpersonal matter. *Id.* at 3; Tr. at 12 (indicating that the Individual was sleeping four to five hours per night). The Individual formed opinions, which she later characterized as “paranoid,” about the coworker; including that the coworker was spreading rumors that the Individual was promiscuous and that the coworker was attempting to sabotage the Individual at work. Ex. 8 at 3. On the night of August 7, 2022, the Individual sent the coworker e-mails via her work computer concerning her suspicions. *Id.*

On August 8, 2022, the Individual was unable to focus at her work site and left to work from home. *Id.* Upon returning home, she was unable to log on to her work computer and formed the opinion that she was experiencing “a test regarding her security clearance.” *Id.* The Individual believed that she could not “trust [] computer screens” and could not discern “what was real and what was unreal.” *Id.*

Later that day, the Individual called a friend because she recognized that her thinking was impaired, and the friend decided to transport the Individual to a hospital. Tr. at 15; *id.* At the hospital, the Individual “yelled that she was suicidal and a threat to national security.” Ex. 8 at 3. However, she also expressed that she felt “on top of the world” and wanted to leave the hospital. *Id.* Based on the Individual’s behavior, she was involuntarily hospitalized for three days. *Id.* During the course of her involuntary hospitalization, clinicians at the hospital diagnosed her with Bipolar Disorder. *Id.* at 5.

Following her release from involuntary hospitalization, the Individual voluntarily admitted herself to a two-week inpatient treatment program. *Id.*; Ex. 6; Tr. at 18–19. As part of her treatment, the Individual developed a relapse prevention plan describing events that could trigger a relapse, early warning signs of a relapse, signs of an ongoing manic episode, steps that the Individual should take to prevent and control manic episodes, and lists of contacts and resources. Ex. 8 at 3–4; Ex. I.

After completing the voluntary inpatient treatment, the Individual enrolled in an intensive outpatient program (IOP) with a psychologist (Individual's Psychologist) through which she received cognitive behavioral therapy for her Bipolar Disorder. Ex. 8 at 4; Tr. at 22. She also arranged to meet with the Site Psychologist on a weekly basis. Ex. 8 at 4. In October 2022, the Individual met with a psychiatrist (Individual's Psychiatrist) who prescribed her 900 mg daily of lithium. Ex. J at 1; Tr. at 24.

On October 13, 2022, the Individual met with the DOE Psychologist for a psychological evaluation. Ex. 8 at 2. As part of the psychological evaluation, the DOE Psychologist conducted a clinical interview of the Individual and administered the Minnesota Multiphasic Personality Inventory-2-Restructured Form (MMPI-2-RF). *Id.* at 3–8. The Individual's responses to the MMPI-2-RF produced a valid result with all clinical scales within normal ranges, which the DOE Psychologist indicated was consistent with the Individual's self-reported stabilization and absence of mood symptoms. *Id.* at 7.

On October 26, 2022, the DOE Psychologist issued her Report in which she concluded that the Individual met sufficient diagnostic criteria for a diagnosis of Bipolar I Disorder, Most Recent Episode Manic, under the *DSM-5*. *Id.* at 8. The DOE Psychologist opined that the Individual "exhibited emotional instability, impaired judgment, and heedless behavior during the manic episode." *Id.* She further opined that, because the Individual's symptoms had been in remission for only approximately two months, the Individual's prognosis for recovery "remained guarded." *Id.* She recommended that the Individual remain in treatment with the Individual's Psychiatrist, the Individual's Psychologist, and the Site Psychologist, and follow all directions from these clinicians. *Id.* The DOE Psychologist indicated that the Individual could demonstrate "adequate evidence of prolonged stability" by adhering to the treatment recommended by the aforementioned clinicians and having no manic episodes for twelve months. *Id.*

By letter dated March 14, 2023, the Individual's Psychologist reported that the Individual had been fully compliant with his treatment recommendations, had made "good progress with her stability," and was in full remission with a good prognosis. Ex. H at 2. By letter dated April 6, 2023, the Individual's Psychiatrist indicated that the Individual had been "fully compliant with [his] treatment recommendations" and that her "medications [were] at stable dosages." *Id.* at 1. By letter dated April 11, 2023, the Site Psychologist stated that the Individual had complied with his treatment recommendations, had not displayed signs of recurrence of a manic episode since August 2022, and had a "very good" prognosis. Ex. L.

On March 16, 2023, the Individual met with a psychologist (Individual's Consultant) for a psychological evaluation in connection with this proceeding. Ex. M. The Individual's Consultant conducted a clinical interview and administered a psychological test – the Personality Assessment Inventory (PAI) – to the Individual. *Id.* at 4–5. The Individual's responses to the PAI produced a valid result with no clinically significant elevations, which the Individual's Consultant interpreted as evidence that "she is presently free of interfering psychopathology, behavior dysregulation, and problematic personality characteristics." *Id.* at 5. The Individual's Consultant concluded that the Individual's Bipolar Disorder was being controlled with treatment and that, based on the Individual's nine months of stability, high level of functioning, insight into her condition, effective psychological care, and interpersonal support, her prognosis was "very good." *Id.* at 5–6.

As of the date of the hearing, the Individual's Psychiatrist continued to prescribe the Individual 900 mg of daily lithium without any adjustments since October 2022. Ex. J at 1; Tr. at 24, 44. The Individual perceived that the medication had helped to stabilize her mood and was "100 percent necessary" to sustaining her recovery. Tr. at 25. The Individual sees the Site Psychologist biweekly, the Individual's Psychologist every four to six weeks, and the Individual's Psychiatrist every six to eight weeks. *Id.* at 24. The Individual has found that therapy has helped her to process negative emotions and manage stress and anxiety. *Id.* at 24–25, 45.

The Individual believes that sleep deprivation significantly contributed to the onset of her August 2022 manic episode. *Id.* at 12–13. She adheres to a sleep schedule, and uses medication when necessary, to ensure that she sleeps seven to eight hours per night. *Id.* at 37–38. The Individual uses an app on her phone to track her moods, sleep, and medication to ensure that she adheres to her treatment plan and can spot significant changes in her mood before they escalated to a manic episode. *Id.* at 30, 35–36. She also abstains from alcohol at the recommendation of the Individual's Psychiatrist because it might trigger a mood episode. *Id.* at 40. The Individual intends to continue complying with the recommendations of her clinicians in the future. *Id.* at 25.

The DOE Psychologist indicated at the hearing that the Individual had received appropriate treatment since the October 2022 clinical interview and that the Individual's condition is stable. *Id.* at 53. The DOE Psychologist updated the Individual's prognosis to "good" based on the Individual's acceptance of her diagnosis, acknowledgement of her impairment during her August 2022 manic episode, compliance with treatment recommendations, stable dosage of lithium for over six months, and recognition that it is imperative for her to continue to adhere to her treatment regimen. *Id.* at 54–58. She also indicated that the Individual's self-described sleep hygiene and abstinence from alcohol would help the Individual to prevent another mood episode and that her use of an app to track her mood would help her to identify a potential episode before it escalated. *Id.* at 56–57.

Although approximately nine months had elapsed since the Individual's August 2022 manic episode, and not the twelve months recommended by the DOE Psychologist in the Report, the DOE Psychologist opined that the passage of additional time without recurrence of symptoms "wouldn't make a huge difference" in light of the Individual's high level of compliance with treatment recommendations and stable dosage of lithium without recurrence of symptoms for over six months. *Id.* at 63–64. The DOE Psychologist indicated that the Individual's treatment "significantly reduces the likelihood" of recurrence of a manic episode and could "reduce the severity of a manic episode if it were to occur." *Id.* at 65.

V. ANALYSIS

The opinion of the DOE Psychologist that the Individual has a psychological condition that could impair her judgment, stability, reliability, or trustworthiness justifies the LSO's invocation of Guideline I. Adjudicative Guidelines at ¶ 28(b). Conditions that could mitigate security concerns under Guideline I include:

- (a) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;
- (b) the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;
- (c) [a] recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government [indicates] that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;
- (d) the past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability; and,
- (e) there is no indication of a current problem.

Id. at ¶ 29.³

By all accounts, the Individual has fully complied with the treatment recommendations of her clinicians consistently for the nine months that have elapsed since her release from inpatient treatment. Moreover, the DOE Psychologist opined that the Individual's treatment regimen was appropriate and could control her Bipolar Disorder with continued compliance. Accordingly, I find the first mitigating condition under Guideline I applicable. *Id.* at ¶ 29(a).

In addition to the Individual's full compliance with her treatment regimen, which she voluntarily entered into, the Individual has favorable prognoses from each of her clinicians and the Individual's Consultant. Moreover, the DOE Psychologist indicated that the Individual's Bipolar Disorder is under control, that the probability of recurrence of a manic episode is significantly lower than prior to her treatment, and that the Individual's prognosis is good. For these reasons, I find the second and third mitigating conditions under Guideline I applicable. *Id.* at ¶ 29(b)–(c).

In light of the Individual's strict compliance with the treatment recommendations from her clinicians, the lack of recurrence of mood episodes since the Individual began receiving treatment, and the positive prognosis from the DOE Psychologist, I find that the Individual has mitigated the security concerns related to her diagnosis with Bipolar Disorder. Accordingly, I find that she has resolved the security concerns asserted by the LSO under Guideline I.

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE to raise security concerns under Guideline I of the Adjudicative Guidelines. After considering all the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I

³ The fourth and fifth mitigating conditions under Guideline I are inapplicable in this case because it is uncontested that Bipolar Disorder is a lifelong condition. Tr. at 68–69.

find that the Individual has brought forth sufficient evidence to resolve the security concerns set forth in the SSC. Accordingly, I have determined that the Individual's access authorization should be restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Phillip Harmonick
Administrative Judge
Office of Hearings and Appeals